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December 8, 2003

The Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Attention: Docket Room

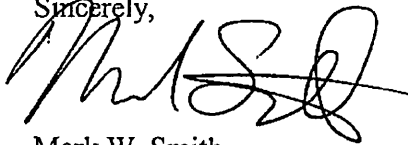
Re: Application of Jackson Energy Authority
Docket No. 03-00438

Dear Chairman Tate:

We have enclosed the post-Hearing Brief of Jackson Energy Authority for filing in the captioned matter, along with 13 copies.

Please let us know if you have any questions about any aspect of this filing.

Sincerely,



Mark W. Smith
For the Firm

MWS:tm

Enclosures

cc: Henry Walker, Esq.
Charles B. Welch, Jr., Esq.
Teresa Cobb, Esq.

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BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE: :
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 APPLICATION OF JACKSON ENERGY :
 AUTHORITY FOR A CERTIFICATE OF :
 CONVENIENCE AND NECESSITY TO : Docket No. 03-00438
 PROVIDE TELECOMMUNICATIONS :
 SERVICES AS A CARRIERS' CARRIER :
 :

**POST-HEARING BRIEF OF
JACKSON ENERGY AUTHORITY**

The Jackson Energy Authority ("JEA") submits this Post-Hearing Brief in support of its Application for a Certificate of Convenience and Necessity to provide telecommunications services as a carriers' carrier, which was filed July 15, 2003 ("Application").

Based upon the Application, the pre-filed testimonies of Mr. John W. Williams, Mr. Kim Kersey, Mr. Dana R. Wheeler, and Mr. Dwight Work, each witness' live testimony, and the record as a whole, JEA respectfully submits that it has the requisite managerial, financial, and technical ability to provide the applied-for services as a carriers' carrier. JEA has represented that it will adhere to all applicable policies, rules and orders of the Tennessee Regulatory Authority and has filed a small and minority-owned telecommunications business participation plan. Accordingly, JEA respectfully submits that the Tennessee Regulatory Authority ("Authority") should grant JEA a Certificate of Convenience to provide services as a carriers' carrier within Madison County, Tennessee.

I. Jackson Energy Authority and the Fiber to the Home System.

A. Jackson Energy Authority.

JEA is a utility authority created on July 1, 2001, by Chapter 55 of the Private Acts of 2001 of the Tennessee General Assembly.¹ JEA is the successor to the Jackson Utility Division of the City of Jackson, Tennessee, which was originally created in 1959. JEA provides electric, gas, water and wastewater services to approximately 38,000 homes, businesses and industries in Jackson, Tennessee and adjacent areas of Madison County, Tennessee.²

JEA's principal place of business is located at 119 East College Street, Jackson, Tennessee 38301. JEA's primary phone number is (731) 422-7500, and the facsimile number of its Chief Executive Officer is (731) 422-7241.

The Jackson Utility Division was a division of the City of Jackson (just as the Electric Power Board of Chattanooga is an independent board of the City of Chattanooga). JEA, by contrast, is a private act governmental utility authority that exists separate and apart from the City of Jackson, Tennessee. Although JEA is not a municipal electric system, the City of Jackson does appoint the directors of JEA,³ and the City of Jackson may remove directors of JEA in certain circumstances under Section 8 of the JEA Private Act.

Section 4(7) of the JEA Private Act authorizes JEA to own and operate a telecommunications system and to provide telecommunications services. In Section 2(20) of the JEA Private Act, the General Assembly broadly defined telecommunications services to include telephone and voice, cable television, data, and Internet access services, among other authorized services. Section 4(7) of the JEA Private Act provides that, to the extent that JEA "provides telephone or telegraph services . . . [JEA] shall be subject to regulation by the Tennessee

¹ Attached as Exhibit B to the Application.

² Application, p. 3.

³ JEA Private Act, Section 7.

Regulatory Authority in the same manner and to the same extent as other certified providers of such services . . . and shall be considered as and have the duties of a public utility, as defined in [T.C.A.] Section 65-4-101, but only to the extent necessary to effectuate such regulation and only with respect to [JEA's] provision of telephone and telegraph services" Section 4(7) of the JEA Private Act also incorporates T.C.A. § 7-52-401 by reference.

The JEA Private Act does not incorporate T.C.A. § 7-52-402 by reference (relating to cross-subsidy issues), but the language of Section 4(7) of the JEA Private Act does require that the telecommunications system be separate from the other utility systems of JEA. The same separation requirement applies to each of JEA's utility divisions as well.⁴

B. The Fiber to the Home Network.

Pursuant to the authority of the JEA Private Act, JEA intends to construct a cable television system with a "fiber to the home" broadband network architecture ("Network"). To the best of JEA's knowledge, the Network will be one of the largest – if not the largest - single deployment of a fiber to the home system in the nation.⁵

The Network will have the capability to provide transport services to support telephony and/or data services in addition to its core cable television, video and Internet capabilities. Upon completion, the Network will consist of a 658 mile fiber optic network that relies fundamentally on an internet protocol over gigabit ethernet architecture. The Network will have the capability to deliver up to 500 Mbps of symmetrical bandwidth to individual subscribers using a single

⁴See JEA Private Act, Section 4(3) (electric service); Section 4(4) (wastewater service); Section 4(5) (gas service); and Section 4(6) (water service), though in certain circumstances, Section 5 of the JEA Private Act would permit some of these utility systems to be operated as a combined system from a financial standpoint.

⁵ Application, p. 3; Pre-filed Direct Testimony of John W. Williams, p. 12, ll. 21-23; Hearing Transcript, Volume I, p.24, ll. 1-14.

fiber.⁶ JEA intends that its typical configuration for residential customers will provide over 30 Mbps capacity to each of these customers.⁷

As the Network is constructed, JEA will utilize the Network to provide cable television service to end use customers. JEA will utilize the Network to provide Internet services, either directly or in combination with one or more Internet service providers. JEA does not presently intend to utilize the Network to offer voice or data service to end users. Instead, JEA intends to enter into contractual relationships with one or more third party competitive local exchange carriers (“CLEC Customers”) that will utilize the Network to provide these services to end users.⁸

JEA will operate the Network to provide transport service to its CLEC Customers, and JEA will install and maintain subscriber-specific infrastructure, such as customer gateways, to the Network. JEA’s CLEC Customers will be responsible for, among other things, providing all end-use services required by law or regulation, providing a soft switch that is compatible with the Network, arranging for connections with long distance carriers, and arranging for interconnection with BellSouth and other CLECs. JEA will offer a range of additional services to its CLEC Customers, but its CLEC Customers will not be required to purchase these services from JEA. The additional services include billing and customer records management, payment collection, sales, marketing, and customer service and help desk support for end-use customers.⁹

JEA’s intended uses of the Network are consistent with a settlement agreement that resolved litigation between JEA and Aeneas Communications, LLC. The settlement agreement was filed in the Chancery Court of Madison County, Tennessee on February 5, 2003.¹⁰ Under that settlement agreement, Aeneas is anticipated to utilize the Network to provide retail

⁶ Application, pp. 3-4; Pre-filed Direct Testimony of John W. Williams, p.7, ll. 7-11.

⁷ Hearing Transcript, Volume I, p. 25, ll. 17-20.

⁸ Application, p. 4; Pre-filed Direct Testimony of John W. Williams, p.7, ll. 16-23.

⁹ Application, p. 5.

¹⁰ Hearing Exhibit 1.

telephone service, subject to a number of pro-competitive provisions and requirements. First, the settlement agreement is non-exclusive; JEA can provide access to the Network to as many CLEC Customers as are interested and willing to utilize the Network.¹¹ Second, JEA is permitted to enter the retail market (subject to required approvals from the Tennessee Regulatory Authority) (i) if Aeneas does not begin providing services promptly after JEA completes the Network; (ii) if Aeneas does not provide service to all customer classes (including residential customers) or if Aeneas does not provide service to each customer class on a non-discriminatory basis and at rates equal to or below BellSouth's standard rates; or (iii) if Aeneas does not, in combination with other providers, achieve certain residential and commercial customer penetrations after 3 and 5 years under the Agreement between Aeneas and JEA.¹²

JEA submits that, with the open access Network, its CLEC Customers will have the opportunity to provide unprecedented alternative facilities-based services to end use customers in Madison County, Tennessee. The pro-competitive benefits of the Network are clear.

C. Financial Ability and Related Issues.

JEA has created a Telecommunications Division (the "JEA Telecommunications Division"), in the same manner as JEA already operates divisions for its electric, water, wastewater and gas operations. Within the JEA Telecommunications Division, JEA has created distinct business units for cable, Internet and telephony services, and JEA will provide the applied-for services under the Application through the JEA telephone business unit of the JEA Telecommunications Division.¹³

JEA has a long history of allocating costs among its various utility divisions. To address cost allocation issues associated with the new JEA Telecommunications Division, JEA has also

¹¹ Hearing Exhibit 1, Paragraph 1. Mr. Kersey reaffirmed JEA's present open access policy at the hearing. Hearing Transcript, Volume I, p. 97, ll. 14-17.

¹² See Hearing Exhibit 1, Paragraph 4.

¹³ Application, p. 6.

established a Cost Allocation Manual, and a copy of the Cost Allocation Manual is attached as Exhibit C to the Application.¹⁴ Under the Cost Allocation Manual, JEA will also allocate costs among the business units within the Telecommunications Division. The cost allocations to the telephone business unit will include allocations of JEA employee costs associated with telephone business unit activities.¹⁵ The telephone business unit will also pay the cable business unit an access charge for use of the Network, and this access charge will cover the costs associated with the telephone business units' anticipated use of the Network and will provide additional funding for retirement of debt.¹⁶ The Cost Allocation Manual is consistent with applicable regulatory principles and theories, including the concepts that the Authority approved in the certification proceeding for the Electric Power Board of Chattanooga, Docket No. 97-07488.¹⁷

The Electric Division of JEA incurred expenses in connection with the formation of the JEA Telecommunications Division and related start up activities, and JEA has now reimbursed the Electric Division for those expenses.¹⁸

JEA has obtained an unsecured line of credit to provide necessary working capital for the telephone business unit in the amount of \$1,000,000,¹⁹ which will be sufficient to cover JEA's projected working capital needs under its pro forma financial statements that are attached as Exhibit D to the Application, as amended at the Hearing.²⁰

¹⁴ See generally Pre-filed Direct Testimony of John W. Williams, pp. 4 – 6.

¹⁵ See generally Application, Exhibit C; Pre-filed Rebuttal Testimony of Dwight Work, p. 5, ll. 17-20.

¹⁶ Pre-filed Rebuttal Testimony of Kim Kersey, p. 6, ll. 13-16; Pre-filed Rebuttal Testimony of Dwight Work, p. 4, l. 3.

¹⁷ Pre-filed Direct Testimony of Dwight Work, p. 4, ll. 6-16.

¹⁸ Pre-filed Rebuttal Testimony of Dana R. Wheeler, p. 3, l. 6 – p. 4, l. 7; Hearing Transcript, Volume II, p. 189, l. 19 – p. 190, l. 16.

¹⁹ Application, p. 7; Pre-filed Direct Testimony of John W. Williams, p. 8, l. 28 – p. 9, l. 8.,

²⁰ Hearing Transcript, Volume II, p.156, l. 25 – p. 157, l.1.

JEA has also already obtained bond financing to fund construction of the Network. On September 16, 2003, JEA issued \$54.3 million of taxable bonds to finance the construction of the Network and to provide working capital during the start-up phase of the project.²¹

D. Managerial and Technical Ability.

From a managerial and technical standpoint, JEA possesses a seasoned team of utility managers. Three members of the JEA management team who are identified in Exhibit G to the Application – John W. Williams, Dana R. Wheeler and Thomas E. Nanney – have substantial managerial and technical experience in the provision of facilities-based utility services. Another member of the JEA management team identified in Exhibit G – Mr. Kim Kersey – has over twenty years' experience in all aspects of cable television operations, including those operators' subsequent expansion into broadband services.²² Two additional members of the JEA team – Darrell Pope²³ and Ben Lovins²⁴ – have significant experience in fiber-based broadband operations. Further, JEA has indicated that it intends to rely upon its fiber to the home vendor and will hire consultants as needed to supplement its internal managerial and technical abilities.²⁵

JEA (including its predecessor, the Jackson Utility Division) has been providing a broad range of utility services to residential, commercial and industrial customers in and around the City of Jackson, Tennessee since 1959, and the audited financials of JEA demonstrate that these systems have been well managed and well run.²⁶

²¹ Pre-filed Rebuttal Testimony of Dana R. Wheeler, p. 2, ll. 20-23.

²² Mr. Kersey's qualifications are listed in Exhibit G to the Application and in his pre-filed rebuttal testimony. In response to questions from Director Jones, Mr. Kersey also explained how his prior cable experience would provide the managerial abilities for JEA's broadband operation. Hearing Transcript, Volume II, p. 186, l. 17 – p. 187, l. 14.

²³ Mr. Pope's qualifications are listed in Exhibit G to the Application, and Mr. Pope testified at the hearing.

²⁴ Pre-filed Rebuttal Testimony of John W. Williams, Exhibit JWW-1.

²⁵ Application, p. 9.

²⁶ Application, p. 3; Application, Collective Exhibit E.

E. Compliance with Policies, Rules and Orders of the Authority.

JEA has represented that it is willing and able to comply with all applicable rules and regulations in Tennessee pertaining to the provision of telecommunications services.²⁷ JEA has also submitted a small and minority owned telecommunications business program,²⁸ and has furnished a corporate surety bond.²⁹

II. Procedural History

JEA filed the Application on July 15, 2003, seeking a Certificate of Convenience and Necessity to provide telecommunications services as a carriers' carrier.

On July 18, 2003, Aeneas Communications, LLC filed a petition to intervene.

This case came before the voting panel at a regularly scheduled Authority Conference on August 4, 2003, and the voting panel appointed the General Counsel or his designee to act as Hearing Officer.

On September 25, 2003, the Hearing Officer issued a Notice of Hearing, setting the hearing in this matter for October 21, 2003.

On October 10, 2003, Charter Communications ("Charter") filed a Petition to Intervene. JEA objected to Charter's Petition, asserting that the proposed intervention was untimely and outside the statutory 60 day certification period, that the proposed intervention raised an issue beyond the scope of the statutory certification requirements under T.C.A. §65-4-201 and that the orderly and prompt conduct of the case would be impaired if the Petition to Intervene were granted.

At a conference call on October 16, 2003, the Hearing Officer found that the Petition to Intervene was timely filed, but the Hearing Officer struck the portion of Charter's Petition that

²⁷ Application, p. 1; Pre-filed Direct Testimony of John W. Williams, p. 10, ll. 12-16.

²⁸ Application, Exhibit H.

²⁹ Application, Exhibit F.

fell outside of the requirements of T.C.A. §65-4-201. By subsequent Order, the Hearing Officer established a revised procedural schedule for the case.

On October 28, 2003, Charter filed the direct testimony of William J. Barta, and on November 4, 2003, JEA filed the rebuttal testimony of John W. Williams, Kim Kersey, Dana R. Wheeler, and Dwight S. Work.

On November 10, 2003, the voting panel held the first day of the hearing on the Application, at which time JEA presented testimony from the following witnesses:

Mr. John W. Williams
President and Chief Executive Officer
Jackson Energy Authority

Mr. Kim Kersey
Senior Vice President – Telecommunications
Jackson Energy Authority

The hearing was reconvened on November 24, 2003. The testimony of Mr. Kim Kersey was completed, and JEA presented the following additional witnesses:

Mr. Dana R. Wheeler
Senior Vice President and Chief Financial Officer
Jackson Energy Authority

Mr. Dwight S. Work, CPA
Work & Greer, P.C.

At the close of JEA's proof on November 24, Charter called two JEA employees to testify:

Mr. Thomas E. Nanney
Senior Vice President – Electric Division
Jackson Energy Authority

Mr. Darrell Pope
Project Manager
Jackson Energy Authority

Charter also presented one witness:

Mr. William J. Barta
Henderson Ridge Consulting, Inc.

Aeneas Communications participated at the hearing, but presented no witnesses.

III. Argument

JEA respectfully submits that JEA satisfies the legal and regulatory requirements applicable to a carriers' carrier. JEA further submits that it has developed a cost allocation manual that appropriately allocates costs between the JEA Telecommunications Division and the regulated utility divisions of JEA, and JEA also submits that any issues relating to its cable system finance arrangements and the involvement of the City of Jackson in those finance arrangements are without merit.

Accordingly, the Authority should grant JEA a Certificate of Convenience and Necessity to provide services as a carriers' carrier within Madison County, Tennessee.

A. Because JEA satisfies the applicable legal and regulatory requirements, the Authority should grant JEA a certificate of convenience and necessity to provide services as a carriers' carrier.

JEA's Application was made pursuant to and should be considered in light of the criteria for granting a certificate of convenience and necessity as set forth in T.C.A. §§ 65-4-201 and 65-5-212. T.C.A. § 65-4-201(c) contains the fundamental standards that a telecommunications service provider must meet in order to receive a certificate of convenience and necessity. That statute requires that the applicant demonstrate that it will adhere to applicable policies, rules and orders of the Tennessee Regulatory Authority, and that statute also requires that the Applicant demonstrate that it possesses "sufficient managerial, financial and technical abilities to provide the applied-for services" – here, the managerial, financial and technical ability to provide transport services to CLEC Customers on JEA's Network, and to provide additional support

services, as outlined in the Application. As is discussed in Parts C and D of Section I, above, JEA clearly satisfies these requirements.

At the hearing, counsel for Charter conceded JEA has the ability to provide support services such as billing, collections, customer service, and marketing.³⁰ While Charter counsel questioned certain JEA witnesses concerning their prior involvement with telephone operations and, particularly, “plain old telephone service,”³¹ JEA does not propose to provide “plain old telephone service” and its Network is not a “plain old telephone service” network. Instead, as Director Jones’ examination of Mr. Kim Kersey revealed, Mr. Kersey’s prior cable experience with broadband networks suits him well to manage the JEA Network and JEA’s provision of transport services over the Network.³²

From a financial standpoint, the pro forma financial projections submitted as Exhibit D to the Application show a feasible plan, and Mr. Kersey’s testimony also revealed that JEA projects positive operating income for its entire Telecommunications Division in year 3 and year 10.³³

Additionally, T.C.A. § 65-5-212 requires applicants to file a small and minority-owned business participation plan with their applications, and the Authority requires applicants to submit a corporate surety bond. As is discussed in Part E of Section I, above, JEA has satisfied these requirements as well.

Because JEA has demonstrated that it possesses the requisite managerial, financial and technical abilities to provide services as a carriers’ carrier and because JEA has satisfied the additional requirements of the Authority, the Authority should grant a certificate of convenience and necessity to JEA.

³⁰ Hearing Transcript, Volume I, p. 60, ll. 7-12.

³¹ Hearing Transcript, Volume I, p. 110, ll. 6-17.

³² See n. 22, above, and accompanying text.

³³ Hearing Transcript, Volume II, p. 165, ll. 6-11.

B. JEA's cost allocation manual appropriately allocates costs between the JEA Telecommunications Division and the regulated divisions of JEA

While the JEA Private Act does not incorporate the cross-subsidy provisions that apply to municipal electric systems under T.C.A. § 7-52-402, Section 4(7) of the JEA Private Act does require JEA to separate the JEA Telecommunications Division from the other utility divisions of JEA. The same separation requirements apply to each of the traditional utility divisions of JEA, with an exception not relevant to this case.³⁴

To satisfy this separation requirement, JEA has established a Cost Allocation Manual that will allocate costs between the JEA Telecommunications Division and its JEA Board-regulated utility divisions. The Cost Allocation Manual is consistent with applicable regulatory principles and theories, including the concepts that the Authority approved in the certification proceeding for the Electric Power Board of Chattanooga, Docket No. 97-07488.³⁵

At the hearing, JEA presented the testimony of Mr. Dwight Work, who assisted JEA in the preparation of the Cost Allocation Manual and who assisted JEA in analyzing additional cost allocation issues related to the Application. Mr. Work testified to various aspects of the Cost Allocation Manual and was subject to cross-examination. In his testimony, Mr. Work emphasized that annual reports containing information about all of JEA's regulated and non-regulated divisions – including its cable and internet business units within the JEA Telecommunications Division – would be furnished to Authority staff for review.³⁶

³⁴ See n. 4, above.

³⁵ See nn. 14-17, above, and accompanying text.

³⁶ Hearing Transcript, Volume II, p. 249, l. 10 – p. 250, l.1.

Charter presented the testimony of Mr. William J. Barta, and Mr. Barta was subject to cross-examination. Importantly, Mr. Barta did not challenge any specific aspect of the JEA Cost Allocation Manual. Instead, his cost allocation testimony focused on what he described as “inherent cross-subsidies.”³⁷ On Charter counsel’s cross-examination of Mr. Work³⁸ and on JEA’s cross-examination of Mr. Barta,³⁹ however, it became clear that Mr. Barta’s “inherent cross-subsidies” were simply efficiencies that would be available to any large operator and efficiencies that a smaller operator could achieve through contractual arrangements with call centers, contract crews and other similar arrangements.

In his pre-filed testimony and his oral testimony, Mr. Barta also raised concerns because, from his standpoint, the JEA telephone business unit neither owned assets nor had any employees. However, on cross-examination by Director Jones⁴⁰ and counsel for JEA,⁴¹ Mr. Barta conceded that a facilities-based carrier could lease assets and was not required to own the assets that the carrier would use to provide telecommunications services. Following a review of Appendix F-4 of the JEA Cost Allocation Manual, Mr. Barta also candidly admitted that his assertion was incorrect concerning the lack of any employees of JEA who would be involved in the telephone business unit operations.⁴²

In the end, the testimony of Charter’s expert witness did not reveal any problems with JEA’s Cost Allocation Manual, and JEA respectfully submits that the Cost Allocation Manual appropriately allocates costs between the JEA Telecommunications Division and the regulated utility divisions of JEA.

³⁷ Hearing Transcript, Volume III, p. 301, ll. 5-8.

³⁸ Hearing Transcript, Volume II, p. 243, l. 10 – p. 244, l. 20.

³⁹ Hearing Transcript, Volume III, p. 299, l. 21 – p. 303, l. 11.

⁴⁰ Hearing Transcript, Volume III, p. 325 l. 14 – p. 326, l. 10.

⁴¹ Hearing Transcript, Volume III, p. 320, ll. 5-10.

⁴² Hearing Transcript, Volume III, p. 312, l. 10 – p. 315, l. 10.

C. JEA is authorized to issue bonds to finance its cable system.

At closing argument, counsel for Charter raised an issue concerning the bond financing arrangements for JEA's cable system. Although he did not specifically identify the legal issue, counsel for Charter suggested an intention to assert that JEA cannot use a portion of the broadband capacity of its bond-financed cable system to provide transport services to JEA's CLEC Customers.

Specifically, Charter counsel asserted:

You know, there's a couple of specific concerns I have. The municipality only has the authority that is expressly delegated by the Tennessee General Assembly, by the State. It's pretty clear . . . that you can finance a cable network through bonds. You can't finance a telephone network through bonds. That authority is not granted in this 1997 legislation

Well, the network is going to provide telephone service. And it's being financed by municipal bonds. It's that simple. Can you do that? I'm not sure⁴³

Before even considering the legal aspects of the issue, it is important to note that Charter's anticipated argument defies common sense for one simple reason: JEA has issued the bonds and already holds the \$54.3 million. The bond market and bond counsel are obviously satisfied with any legal issues surrounding the issue. As the Directors know from their experiences in handling regulatory finance issues, a bond issue of this size would not have closed without an opinion from nationally recognized bond counsel opining that the bonds and any credit enhancements were valid and binding obligations of the parties obligated under the transaction.

Turning to the legal issues, Charter's anticipated argument is simply wrong.⁴⁴ Contrary to Charter counsel's assertions, JEA is a private act utility authority and not a municipal electric system; JEA is traveling under the bond authorization of its private act and is not traveling under

⁴³ Hearing Transcript, Volume III, p. 334, l. 23 – p. 335, l. 15.

⁴⁴ Cable system finance issues are also not relevant to a certification proceeding or to other matters before the Authority.

the 1997 municipal electric telecommunications legislation; and the bonds are bonds of JEA and are not bonds of a municipality.

JEA's bond authorization is contained within its private act enabling legislation, and JEA has clear authority to issue bonds for any of its systems under Section 11 of the JEA Private Act. Section 2(19) of the JEA Private Act defines these "systems" to include any of the services that JEA is authorized to provide under the JEA Private Act. As discussed above, Section 4(7) of the JEA Private Act authorizes JEA to provide cable service. JEA's issuance of bonds to finance a cable system, therefore, is clearly permitted under the JEA Private Act.

Similarly, the City of Jackson⁴⁵ is plainly authorized to provide a credit enhancement for JEA's bond issue under Section 12(13) of its Charter. That Section provides, in relevant part:

The City of Jackson shall have the power and authority:

(13) To assess, levy, and collect taxes for all general and special purposes on all subjects or objects of taxation . . . and by resolution pledge the full faith and credit . . . of the city as guarantor to the payment of the principle of, premium, if any, and interest on any bonds, notes or other obligations issued by any political subdivision of the state or any governmental agency, authority or instrumentality for the purpose of providing any such utility or service to the city and those therein⁴⁶

Accordingly, the assertions that JEA cannot issue bonds to build a cable system and that the City of Jackson cannot provide a credit enhancement for those bonds are without merit, and the Authority should reject Charter's unfounded attempt to raise cable system finance issues involving JEA and the City of Jackson before the Authority in this case.

⁴⁵ The City of Jackson is not a party to this proceeding. Because the JEA Private Act establishes JEA as a governmental utility authority separate and apart from the City of Jackson, the City of Jackson is not required to be a party to this proceeding. Separate and apart from the lack of merit to Charter's argument, there is also no jurisdiction over the City of Jackson, Tennessee in this case.

⁴⁶ Chapter 138 of the Private Acts of 2002.

IV. Conclusion

For the foregoing reasons, the Authority should find that JEA has satisfied the applicable legal and regulatory requirements and that the grant of the relief requested in the Application is in the public interest, and the Authority should grant JEA a Certificate of Convenience and Necessity to provide telecommunications services as a carriers' carrier in Madison County, Tennessee.

Respectfully submitted this 8th day of December, 2003.

Mark W. Smith with permission
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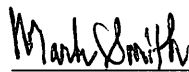
CERTIFICATE OF SERVICE

I certify that a true and exact copy of this pleading has been served upon the following attorneys by delivering a true and exact copy thereof to the offices of said counsel or by placing a true and exact copy of said pleading in the United States mail addressed to said counsel at his office with sufficient postage thereupon to carry the same to its destination:

Charles B. Welch, Jr., Esq.
Farris, Mathews, Branan, Bobango & Hellen, P.L.C.
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Nashville, Tennessee 37219

Henry Walker, Esq.
Boult, Cummings, Conners & Berry, PLC
414 Union Street, Suite 1600
P.O. Box 198062
Nashville, Tennessee 37219

This 8th day of December, 2003.



For: Strang, Fletcher, Carriger, Walker,
Hodge & Smith, PLLC

with permission